

(c) Any person conducting a remedial action pursuant to an oversight document or the ISRA or UST programs, shall develop a permit application schedule to identify the time frames for application and issuance/approval pursuant to N.J.A.C. 7:26E-6.5(b)3.

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

In (a)31iii and (c), substituted "ISRA" for "ECRA".

Amended by R.2003 d.29, effective February 3, 2003.

See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

Rewrote the section.

SUBCHAPTER 8. ENGINEERING AND INSTITUTIONAL CONTROLS

7:26E-8.1 General requirements

(a) The purpose of this subchapter is to present the requirements for the use of engineering and institutional controls as part of remedial actions for contaminated sites.

(b) Any person proposing to use engineering and/or institutional controls shall:

1. Propose a deed notice, pursuant to N.J.A.C. 7:26E-8.2, whenever:

i. Soil contamination will remain above a concentration that would allow for the unrestricted use of the property; or

ii. A groundwater remedial action includes containment;

2. Demonstrate in the remedial action workplan submitted to the Department pursuant to N.J.A.C. 7:26E-6.2(a), that:

i. The selected remedial action will remain protective of the public health and safety and of the environment for as long as the contamination exists above a concentration that would allow for the unrestricted use of the property;

ii. Access to the site or area of concern, and human exposure to the contamination at the site or area of concern, can both be controlled when necessary to ensure the protectiveness of the remedial action; and

iii. The current and planned future uses of the site or area of concern will be consistent with all engineering and institutional controls; and

3. Monitor each engineering and institutional control until such time that the Department approves in writing the removal of the control.

(c) In evaluating the protectiveness of a remedial action that includes an engineering and/or institutional control, the

Department will consider site-specific conditions, including, but not limited to:

1. The concentration of contaminants;
2. The mobility and toxicity of the contaminants;
3. The presence of free and/or residual product, off-spec or discarded product or by-product from a manufacturing or industrial process, containerized wastes, or buried waste;
4. The current surrounding land uses;
5. The implementability of the control over the long term; and
6. Any other factors that are relevant to evaluating the protectiveness of the remedial action.

7:26E-8.2 Deed notice requirements

(a) The person responsible for conducting the remediation of a site that includes a soil remedial action that includes a proposed deed notice shall:

1. If that person is the owner of the site, record a deed notice for the site pursuant to (c) and (d) below; or

2. If that person is not the owner of the site, provide the Department documentation of the owner's consent to record the necessary deed notice pursuant to (b) below.

(b) The person responsible for conducting the remediation that proposes a remedial action that includes a deed notice shall provide the Department with a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16, as follows:

1. If the property owner is any local, county, State or Federal government agency, and a deed is not associated with the property, such as roads and sidewalks, the person responsible for conducting the remediation shall submit written documentation of the owner's agreement to provide notice pursuant to (c) below as follows:

i. For a municipality, the written agreement shall be in the form of a formal resolution by the municipal government;

ii. For a county, the written agreement shall be in the form of a formal resolution by the county freeholders; or

iii. For a State or Federal governmental agency, the head of the agency or their designee shall sign the written agreement; or

2. If the property owner is any other person than the person responsible for conducting the remediation, the person responsible for conducting the remediation shall provide the Department with written documentation of the owner's agreement to record a deed notice for the site.

(c) The person responsible for conducting the remediation proposing a remedial action that requires the owner of the site to record a deed notice shall comply with the following procedures for drafting a deed notice for the Department's approval as follows:

1. For a property that is owned by a local, county, State or Federal government agency (except as provided in (c)2 below), and no deed is associated with the site, the person responsible for conducting the remediation shall submit a draft notice worded pursuant to (d) below, to serve as the notice in lieu of a deed notice;

2. For a property that is owned by the U.S. Department of Defense, and no deed is associated with the site, the person responsible for conducting the remediation shall draft an amendment to the Base Master Plan or Land Use Control Assurance Plan worded pursuant to (d) below, to serve as the notice in lieu of a deed notice; or

3. For a property that is owned by any person not described in (c)1 or 2 above, the person responsible for conducting the remediation shall provide the Department with a draft deed notice pursuant to (d) below.

(d) The person responsible for conducting the remediation who elects to use a deed notice as part of a remedial action for a contaminated site shall submit a draft deed notice to the Department, as part of the remedial action work plan pursuant to N.J.A.C. 7:26E-6.2(a)16, that:

1. Is worded exactly as the model document in N.J.A.C. 7:26E Appendix E; and

2. Includes copies of all required maps that:

i. Are compatible with the "New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards," in N.J.A.C. 7:1D, Appendix A. For additional guidance see the most recent version of the Department's "Guidance for the Submission and Use of Data in GIS Compatible Formats Pursuant to Technical Requirements for Site Remediation" at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm>;

ii. Are on 8.5 inch by 11 inch paper (using multiple sheets if necessary);

iii. Are scaled at one inch to 200 feet or less;

iv. Are clean, clear, and legible; and

v. Include:

(1) A bar scale;

(2) A north arrow;

(3) A legend;

(4) The applicable Program Interest name and number (Preferred ID);

(5) Tax Block and Lot numbers; and

(6) The date prepared.

(e) The person responsible for conducting the remediation who proposes to use a deed notice as part of a remedial action for a contaminated site shall submit a final draft of the deed notice to the Department as part of the remedial action report pursuant to N.J.A.C. 7:26E-6.6, unless the Department directs its submission at an earlier time.

(f) Within 45 calendar days after the receipt of the Department's written approval of the final deed notice submitted pursuant to (e) above, the person responsible for conducting the remediation shall comply with the following, as applicable:

1. If there is a deed for the property, the person shall have the owner of the property record the deed notice with the office of each county recording officer responsible for recording deeds for each county in which the site is located;

2. If the property to which the notice applies is a local, county or State roadway, the person shall provide a paper copy of the document referenced in (c)1 above, and an electronic copy in a read only format, including all of the exhibits, to the following, as applicable:

i. Each road department of each municipality in which the site is located;

ii. Each road department of each county in which the site is located;

iii. The New Jersey Department of Transportation; and

iv. Utility companies with easements on the roadway, and

3. In all other circumstances, the person shall provide a paper copy of the recorded deed notice, stamped "Filed," or notice, as applicable, and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in (g) below.

(g) Within 45 calendar days after receipt of the Department's written approval of the final deed notice submitted pursuant to (e) above, the person responsible for conducting the remediation shall provide, as applicable, a paper copy of the recorded deed notice or document referenced in (c)1 above, and an electronic copy in read only format, including all exhibits, to the following:

1. The Department's assigned case manager;

2. The municipal clerk, mayor and town council of each municipality in which the site is located;

3. The local, county, and regional health department in each municipality and county in which the site is located;

4. Each gas, electric, water, sewer, cable company and all other utilities that service the site or have a license or easement to cross the site;

5. The New Jersey Realtors Association;

6. The Pinelands Commission if the site is located within an area subject to the jurisdiction of the Pinelands Commission; and

7. Any other person who requests a copy.

(h) Any person who chooses to redevelop or change the use of a site in a manner inconsistent with a remedial action that includes an engineering and/or institutional control, or conduct additional remediation or other activities that may compromise the integrity of an engineering control, such that the remedy no longer meets the applicable health risk standard, or is no longer protective of public health, safety and of the environment, shall obtain the Department's prior written approval of such activities by submitting:

1. A memorandum of agreement application, pursuant to N.J.A.C. 7:26C-3, for the Department's oversight of activity, if the person is not already subject to the Department's oversight for the site;

2. A remedial action workplan pursuant to N.J.A.C. 7:26E-6.2 prior to implementation of such activities; and

3. A request to the Department, pursuant to (i) below, to remove or modify, as appropriate, the declaration of environmental restrictions or deed notice.

(i) Any person may submit a written request along with the memorandum of agreement application, at the address provided at N.J.A.C. 7:26C-1.4(e), to remove or modify a remedial action that includes an engineering and/or institutional control. The person shall submit a copy of the existing deed notice or declaration of environmental restrictions stamped "filed" and documentation supporting the removal or modification based on the following:

1. The performance of subsequent remediation;
2. A change in conditions at the site;
3. The Department's revision of soil remediation standards; or
4. A change in the maintenance or monitoring requirements in this chapter.

(j) The Department will evaluate the request submitted pursuant to (h) above and within 90 calendar days after the Department's receipt of the written request will either:

1. Approve the request with the condition that:
 - i. The property owner records with the office of each county recording officer, pursuant to (f) above, a notice executed by the Department, that the use of the site is no longer restricted or that the restriction has been changed and, that the declaration of environmen-

tal restrictions or deed notice is therefore either terminated or modified. Any Department approved modified declaration of environmental restrictions or deed notice delineating the new restrictions shall be recorded pursuant to this section;

ii. The applicant provides written notice to each municipality in which the site is located, with a copy to the Department sent to the address provided at N.J.A.C. 7:26C-1.4, of the removal or change of the restrictive use conditions; and

iii. The applicant provides an electronic copy in a read only format, of all information required in (c) above, for the approved modified declaration of environmental restrictions or deed notice as required pursuant to (f) and (g) above; or

2. Issue a written denial of the request.

Administrative correction.
See: 35 N.J.R. 1928(a).

7:26E-8.3 Groundwater classification exception areas

(a) A groundwater classification exception area serves as an institutional control by providing notice that there is groundwater pollution in a localized area caused by a discharge at a contaminated site. The area and depth of groundwater pollution will be determined based on actual groundwater contamination, as well as fate and transport modeling. The Department will establish a groundwater classification exception area as part of a remedial action for groundwater at a contaminated site when the groundwater does not meet the groundwater quality standards, pursuant to N.J.A.C. 7:9-6.

(b) The person responsible for conducting the remediation shall submit the following information to the Department as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2:

1. For each groundwater sampling point, a list of all contaminants and their concentrations, that do not meet the groundwater quality standards, from the most recent 24 months of groundwater sampling;
2. A description of the fate and transport of the contaminant plume, using the most mobile and persistent contaminants present that exceed the groundwater quality standards, including:
 - i. The horizontal and vertical distances that the contaminated groundwater plume is expected to travel before contaminant concentrations decrease to or below the applicable groundwater quality standards;
 - ii. A proposed expiration date for the classification exception area; and
 - iii. All other information required by Appendix F, incorporated herein by reference;

3. The following maps consistent with the requirements of N.J.A.C. 7:26E-8.2(d)2;

i. A USGS Quadrangle map (paper copy only), indicating the location of the site;

ii. A map, in paper and electronic formats, indicating the predicted extent of the groundwater contaminant plume; and

iii. A map (paper copy only) showing all properties, according to tax block and lot with a reference to the year of the referenced tax map, under which the contaminant plume is located and is expected to migrate;

4. Information regarding current and projected use of the groundwater in the aquifer(s) in which the groundwater classification exception area is located, as follows:

i. The current groundwater use based on the most recent well search conducted pursuant to this chapter; and

ii. The future groundwater use for a 25-year planning horizon based on the following, without limitation:

(1) The New Jersey Water Supply Master Plan;

(2) Department of Environmental Protection, Bureau of Water Allocation;

(3) Municipal master plans;

(4) Zoning plans;

(5) Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;

(6) Local planning officials;

(7) County and local boards of health; and

(8) Local and/or county ordinances restricting installation of potable wells; and

5. Copies of the certified letters, return receipt requested, notifying the following persons of the need to establish the groundwater classification exception area:

i. The municipal and county clerks for each municipality and county in which the groundwater classification exception area will be located;

ii. The local, county and regional health department for each municipality and county in which the groundwater classification exception area will be located;

iii. The designated County Environmental Health Act agency for each county in which the groundwater classification exception area will be located;

iv. The county planning board for each county in which the groundwater classification exception area will be located;

v. The Pinelands Commission if the groundwater classification exception area will be located within the jurisdiction of that Commission;

vi. New Jersey Department of Environmental Protection, Water Supply Administration:

(1) Bureau of Safe Drinking Water; and

(2) Bureau of Water Allocation; and

vii. If the groundwater classification exception area is located in a groundwater use area, each owner of any real property within the groundwater classification exception area.

(c) The Department will establish a groundwater classification exception area based upon the projected area of the contaminant plume in the groundwater, pursuant to (b) above.

(d) The Department may revise or reestablish a groundwater classification exception area at any time to more accurately reflect groundwater conditions using any relevant data, including any data submitted along with the certification required by N.J.A.C. 7:26E-8.6.

(e) The Department will remove a groundwater classification exception area based upon groundwater data, collected pursuant to N.J.A.C. 7:26E-8.6(a)7, that indicate that the contaminant concentrations in the groundwater meet all of the applicable groundwater quality standards.

7:26E-8.4 Monitoring, maintenance, and biennial certification—who has obligation and when

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control and for submitting the biennial certifications pursuant to this subchapter include, without limitation, each of the following:

1. Any person with a legal obligation to conduct the remediation, including, without limitation, each of the following:

i. A person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substance that was the subject of the remedial action that includes the engineering and/or institutional control;

ii. The owner of the site of the discharge at the time of the remedial action that includes the engineering and/or institutional control;

iii. An owner or operator that triggered the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., for the industrial establishment that was the subject of the remedial action that includes the engineering and/or institutional control;